

117504

20794

Stepin

## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-203627

DATE: February 16, 1982

MATTER OF: Fortec Constructors

## DIGEST:

In cases where the contracting agency is authorized to correct a mistake in bid after bid opening, GAO review is restricted to determining whether the contracting agency had a reasonable basis for the determination to correct. Based on our review, we cannot question the Army's decision to allow correction for a \$100,000 bid error where the bidder's worksheets support the correction.

Fortec Constructors (Fortec) protests the proposed award of a contract to Batteast Construction Company Inc. (Batteast), for construction of Company Administrative Facilities, Barracks and Support Facilities at Fort Campbell, Kentucky, under invitation for bids (IFB) No. DACA01-81-B-0028 issued by the Mobile District, U.S. Army Corps of Engineers. Fortec contends that the Army has erroneously granted an increase in Batteast's bid prior to award in response to an alleged bid error. We deny the protest.

At time of bid opening on June 3, 1981, six bids were received. Batteast was the apparent low bidder with a bid indicating on its face a total bid price of \$5,069,744; Fortec submitted the second lowest bid of \$5,287,050. However, a mathematical check of Batteast's bid revealed that the prices for the individual units of work totaled \$100,000 less, or a total of \$4,969,744. The total bid was corrected to the lower figure in accordance with the provisions of paragraph 11 of the IFB entitled "Arithmetic Discrepancies," which provided that for initial evaluation of bids "apparent errors in addition of lump-sum and extended prices will be corrected."

When advised of the apparent mathematical error, Batteast stated that the error was not in the total bid of \$5,069,744, but in the unit charges for bid items 3 and 4, which should have been \$563,500 each rather than \$513,500. Batteast stated further that last-minute bid changes had been phoned to its representative in Mobile and the figures had either been misread or had been recorded wrongly by the representative. In support of the alleged error, Batteast submitted its worksheets.

The worksheets consisted of: (1) several recapitulation sheets dated May 15, 18, and 27, 1981; (2) an undated copy of the bidding schedule on which bid charges are entered by hand in ink and in pencil by bid item; and (3) a scratch sheet showing calculations and reductions. On the recapitulation sheets, unit prices and total costs for material and labor are entered by hand in pencil by work category, that is, for concrete, electrical, mechanical, carpentry, and so forth, rather than by bid item. There is no indication how the bids for the individual items were derived from the recapitulation sheets.

Batteast's project manager explains that he "personally prepared the estimate, [but], due to the fact that the chief estimator was in the hospital, [he] was unable to prepare each building separately and control the sub bids on bid day." Therefore, he "prepared a total figure for the bid package, and then endeavored to make the proper break out for each item or building after the bid was totaled." The recapitulation sheet of May 27 shows a total figure of \$5,089,839. Also, on that sheet is a circled notation: "BID 5,069,744." On the scratch sheet, reductions were made for electricity, paint, and steel erection. These reductions, which totaled \$30,000, were erroneously totaled as \$28,000, and the \$5,089,839 is shown as reduced to \$5,061,839. A circled notation provides: "\$5,069,744.00 BID." Finally, on the copy of the bidding schedule submitted by Batteast, the figure "563,500" is shown for bid items 3 and 4.

In a June 29, 1981, letter to the contracting activity, Batteast's project manager described the figures, on its scratch sheet, as follows:

"\* \* \* the [scratch sheet] represented some last minute notes as ... as mental notes. I felt I could cut the Electrical Work by \$4,000 and Painting by \$12,000,

also Steel Erection by \$14,000. The total as you can see was not correct. If you will note, our front sheet [totalled] \$5,089,839 but I was trying to analyze any cuts I could make, so after these cuts [to \$5,061,839] I found that the precast copings were going to cost me more so I raised the quote [by \$7,905] back to \$5,069,744."

On review of the submitted worksheets, the contracting officer recommended against correction because the intended bid could not, allegedly, be verified by reason of the lack of substantiation in the recapitulation sheets of the claimed bid of \$563,500 for items 3 and 4 and the increase from \$5,061,839 to \$5,069,744; therefore, in the contracting officer's view, the evidence submitted was not "clear and convincing that the bid as submitted was not intended." However, on submission, the Corps' Chief Counsel found that there was clear and convincing evidence as to both the existence of a mistake and the intended bid; therefore, he determined that Batteast should be permitted to correct its mistake in bid in the amount of \$100,000, representing the additional cost for items 3 and 4.

Fortec contends that the determination to allow correction is erroneous as a matter of law, since the evidence submitted does not, allegedly, constitute the "high standard of proof necessary" for the protection of the integrity of the competitive bidding system before correction of a bid is authorized. The assertions by Batteast as to the manner in which the alleged mistake occurred are unsupported by any evidence, except for the "undated, isolated notations" on the working papers submitted. The assertion that the bid was telephoned to a person in Mobile and that the project manager "either misread" the items "over the phone \* \* \* or, in his rush in writing our prices, he made an error" in recording the figures is not supported by a statement from the agent in Mobile. Fortec also claims that Batteast has submitted to the Army an erroneous June 5 tabulation as to the prices bid for items 5, 6, 9, and 18 of the IFB.

Defense Acquisition Regulation (DAR) § 2-406.3 (1976 ed.) provides, in pertinent part, that, when a bidder requests permission to correct a mistake in the bid and clear and convincing evidence establishes both

the existence of a mistake and the bid actually intended, a determination permitting correction of the mistake may be made with qualifications not here relevant. Although our Office has retained the right of review, the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency; moreover, the weight to be given the evidence in support of an alleged mistake is a question of fact to be considered by the administratively designated evaluator of evidence, whose decision will not be disturbed by our Office unless there is no reasonable basis for the decision. See United Ammunition Container, Inc., B-198822, August 8, 1980, 80-2 CPD 105. We see no basis to question the determination which allowed correction of Batteast's bid.

The entirety of the worksheets submitted by Batteast, as noted above, shows how the company arrived at a net figure of \$5,061,839. This figure resulted from the subtraction of \$28,000 from a gross figure of \$5,089,839, which represented Batteast's total bid after profit, overhead, and bond were included. To this net figure of \$5,061,839, Batteast says it added \$7,905 for an increase in the cost of "precast copings" which is shown as a masonry subitem on Batteast's May 18 recapitulation sheet. The alleged reason why Batteast added \$7,905 to the net figure of \$5,061,839 is not shown on the scratch sheet; moreover, the \$7,905 figure is not physically shown on the scratch sheet. Nevertheless, it is clear that \$7,905 was added, as a matter of mathematical necessity, in order to arrive at the "Bid" figure of \$5,069,744. The \$5,069,744 figure is shown on the scratch sheet, the copy of the bidding schedule, and the May 27 recapitulation sheet. Therefore, we consider it irrelevant that the scratch sheet does not show why the \$7,905 was added. Consequently, we do not agree with Fortec's argument that the worksheet data consist of "isolated notations" which are insufficient to support correction.

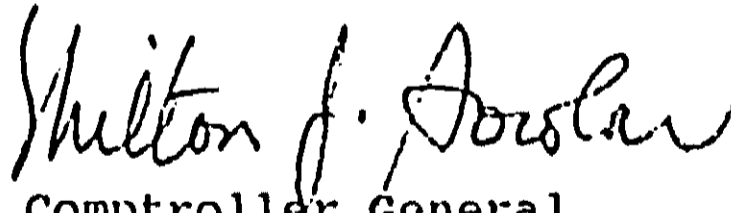
Further, there is no requirement that worksheets be dated, as suggested by Fortec; nevertheless, we point out that all the recapitulation sheets contain dates. Although we agree with Fortec's statement that Batteast's June 5 tabulation contains individual pricing errors, this tabulation is not a worksheet which contains the

controlling entries for purposes of bid correction; therefore, these pricing errors are irrelevant to the bid correction process.

Next, we cannot question the Army's determination that Batteast's claimed error of \$100,000 is clearly shown in items 3 and 4 of Batteast's copy of the bid schedule. The total for the prices of these items on the copy is \$100,000 more than the total for these items as shown on Batteast's actual bid; also, the prices on the copy do add up to the total bid figure noted on the copy, on the May 27 recapitulation sheet, and, in fact, entered on the submitted bid. Moreover, there is no requirement that the prices bid for items 3 and 4 be confirmed by data found in the recapitulation sheets; therefore, the lack of this data does not require denial of bid correction.

Although Fortec claims that there is insufficient evidence to show how this mistake occurred, DAR § 2-406.3, above, requires the establishment only of the "existence of a mistake." Therefore, since the bid schedule clearly establishes the existence of the mistake in items 3 and 4, there was no need for Batteast to establish conclusively how the mistake came to be. Consequently, it is irrelevant that the record does not contain a "statement from Batteast's agent in Mobile" who allegedly was part of the process which resulted in the mistake.

Accordingly, we deny the protest.

*for*   
Comptroller General  
of the United States